

In re ) Fair Hearing No. 11,630  
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Appeal of )

The petitioner appeals a decision by the Department of Social Welfare terminating his participation in the Reach Up program based on his ineligibility for ANFC benefits.

The facts are few and undisputed in this matter. In October of 1992, the petitioner was notified that his ANFC grant would close on November 1, 1992 because he was receiving unemployment compensation benefits of \$720.00 per month which was in excess of the \$710.00 per month benefit level for a four person family.<sup>1</sup> The petitioner was also notified simultaneously that his participation in the Reach Up program

1. The petitioner originally appealed the Department's use of unemployment compensation benefits to decrease his ANFC payments in Fair Hearing No. 11,210. The petitioner attempted to raise that same issue in this appeal but was prevented from doing so based on the hearing officer's ruling that the issue of the validity of offsetting ANFC benefits with unemployment compensation benefits had already been decided by the Board in the Department's favor in the above fair hearing. The petitioner represented that he did not have a dispute with the accuracy of the figures used or mathematical calculations performed by the Department in the current reduction. Therefore, the issue was limited to the Reach Up closure. In his post-hearing memorandum in this matter, the petitioner challenged the authority of the Department to terminate, as opposed to reduce, his benefits when he receives unemployment compensation under the statute. That matter will be addressed briefly herein.

would also terminate on November 1, 1992 because he was no longer an ANFC recipient. The petitioner appealed that decision on November 6, 1992, because he believes the Department is without authority to terminate his Reach Up participation.

ORDER

The Department's decision is affirmed.

REASONS

The Reach Up program operated by the Department of Social Welfare is created, regulated by, and partially funded under the federal Job Opportunities and Basic Skills Training Program (JOBS) created by the Family Support Act of 1988 which is codified at 42 U.S.C. § 681-685. The purpose of that program is "to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence." 42 U.S.C. § 681(a) The statute requires state agencies operating a JOBS program to "ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing." 42 U.S.C. § 682(c)(1) Throughout the regulations, the states are required to take action with regard to "applicants for and recipients

of aid to families with dependent children" (see e.g. 42 U.S.C. §§ 682(c)(2),(4), and (5) and (g)(2)); nowhere is there any specific provision for assisting persons who are not ANFC recipients. The statute specifically authorizes the Secretary of Health and Human Services and the Secretary of Labor jointly to enact regulations to carry out the provisions of the statute. 42 U.S.C. § 684(f)

The regulations adopted by the Secretaries are published at 45 C.F.R. § 250 et seq. and state as their first goal to "encourage, assist and require applicants for and recipients of AFDC to fulfill their responsibilities to support their children by preparing for, accepting, and retaining employment". 45 C.F.R. § 250(a)(1) To this end, the program sets up various program options to be adopted by participating states. Vermont's JOBS program, Reach Up, mimics this goal in its regulations which describe the mission of Reach Up as follows:

Reach Up is a work and training program for members of ANFC families which promotes long-term independence from welfare. It provides them with the program activities and support services necessary to become self-sufficient and fulfill their responsibilities to provide financial support for their children.

W.A.M. § 2340.1

The state's regulations further state that there are not enough resources for each ANFC recipient to receive Reach Up services and that it is not an "entitlement" program. W.A.M. §

2340.2

The federal regulations require that State JOBS plans contain a description of their program operations including the following:

(13) If a State elects to provide case management services to an individual who loses eligibility for AFDC after she accepts employment, the length of time up to 90 days for which services will be provided;

45 C.F.R. § 250.21(d)

Vermont's JOBS program has opted to extend case management to individuals who lose eligibility for ANFC after the receipt of employment for a full ninety days. All other persons who are terminated from ANFC benefits become ineligible for any Reach Up services. The regulation adopted by the Department provides, in pertinent part, as follows:

An individual's participation in Reach Up ends when one of the following events occurs:

The participant's ANFC grant has been closed and the reason for closure is not excess income due to employment or participation in an on-the-job training (OJT) or work supplementation OJT program. Individuals whose grants are closed due to income from employment may continue to be case managed for 90 days after closure. Individuals whose grants are closed due to income from or hours of work in an OJT continue to be Reach Up participants for the duration of the OJT program but case management may continue only while the participant continues to receive an ANFC grant and 90 days thereafter (if still participating in the OJT program or employed). Individuals whose grants are closed for any reason during participation in work supplementation OJT may continue to be case managed during the duration of the program and if, upon completion of the WS- OJT, the ANFC grant is (or has been previously) terminated, for 90 additional days if the individual is employed.

. . .

With the exception of participants in OJT whose ANFC grants are terminated more than 90 days before their OJT ends (see above), case management ends when program participation ends.

W.A.M. § 2343.3

It is clear from the above statute and regulations that the JOBS program (Reach Up in Vermont) is intended for persons who are ANFC recipients. The Department's regulations make it equally clear that with certain very narrow exceptions, which do not include persons who are ineligible for ANFC due to the receipt of unemployment benefits, persons who are terminated from ANFC are also terminated from participation in the Reach Up program. There is nothing in the statute or regulations which would support the petitioner's contention that he has a right to continue to participate in Reach Up.

The petitioner claims that he should have a right to 90 days of case management under Reach Up after he is terminated from ANFC just like persons who are terminated for getting jobs. To decide otherwise he argues, is discrimination against him. However, it is clear in the federal regulations that state plans are restricted to 90 day case management extensions only for persons who are ANFC ineligible due to employment income. See 45 C.F.R. § 250.21(d)(13), supra. The petitioner advances no argument as to why such an exception is outside the scope of the Secretaries' authority, or is

irrational or unrelated to the purposes of the Act. Without such a showing, it must be assumed that the federal regulations which create this exception are valid and a constitutional exercise of the Secretaries' authority.

As a practical matter, it is not difficult to see why such a distinction might be made. Persons who are just beginning to work may need continued support services to enable them to work. Persons whose source of income is unemployment compensation may need help in continuing to seek employment, but as the Department points out in its memorandum, that help is already available to persons receiving unemployment benefits from the Department of Employment and Training. In addition, the very fact of receipt of unemployment compensation indicates an attachment by the recipient to the work force not exhibited by persons who are ANFC recipients. Such an attachment may indicate that the kind of job preparation and seeking skills taught in a JOBS program may not be as crucial to persons who are ineligible for ANFC due to the receipt of unemployment compensation. It is not obvious that the federal and state regulations excluding this group is either discriminatory or irrational as the petitioner claims.

Finally, the petitioner, after conceding that his appeal of his ANFC termination due to the receipt of unemployment benefits is identical to his prior appeal and thereby suffering a ruling against his raising the identical issue

again, has attempted in his memorandum to distinguish this termination of ANFC benefits from his former mere reduction in benefits. The termination occurred because the benefits were so large that after the offset there were no benefits left to be paid. The petitioner argues that the federal law only allows for the reduction of ANFC, not the total termination of benefits if unemployment compensation is received. The federal statute at issue requires that state plans provide:

(iv) for the reduction of the aid to families with dependent children otherwise payable to any child or relative specified in subsection (a) of this section by the amount of any unemployment compensation that such child's parent described in subparagraph (A)(i) receives under an unemployment compensation law of a State or of the United States:

42 U.S.C. § 607(b)(B)

Although the word reduction is used, there is nothing in the above section which would prevent the Department from reducing an ANFC grant to zero based on the receipt of an unemployment compensation benefit which equaled or exceeded the ANFC benefit, as it does in this case. In fact, it appears that the above federal statute would require a state to take that action as a condition for program participation. The petitioner's argument in this regard is found to be without merit.

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